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- a. contacting [said] a fluid sample suspected of containing said target ligand with a ligand receptor conjugate, said ligand receptor conjugate comprising at least one ligand receptor coupled to a signal development element comprising a water soluble hybrid phthalocyanine derivative, [so that] to form a homogeneous reaction mixture, whereby said ligand receptor conjugate specifically binds to said target ligand [to form a homogeneous reaction mixture];
- b. [detecting bound] generating a detectable signal from said ligand receptor conjugate bound to said target ligand in said reaction mixture [using said water soluble phthalocyanine derivative]; and,
- c. relating the detectable signal to the presence or amount of said target ligand in said fluid sample.

REMARKS

Claims 23-29 are pending in the application. Applicant has amended claims 28 and 29, and added new claims 30-35 herein. The new and amended claims are fully supported by the specification and do not introduce new matter or require a new search. Specifically, the amended claims simply clarify the claimed subject matter using preferred terminology, and are commensurate in scope to the previously pending claims.

Notwithstanding the foregoing, Applicant expressly reserves the right to pursue subject matter no longer claimed in the instant application in one or more applications which may claim priority hereto. Applicant respectfully requests reconsideration of the claimed invention in view of the foregoing amendments and the following remarks.

Restriction Requirement

The Examiner has divided claims 23-29, all the claims currently pending, into three groups and argued that each group of claims represents a distinct invention. These groups of claims are:

Group I Claims 23-27

Group II Claim 28

Group III Claim 29

Applicant hereby elects to prosecute the claims of Group II (Claim 28).

Notwithstanding the foregoing, Applicant respectfully traverses this 3-way restriction, and submits that the examination of claims 28 and 29 can be made without serious burden on the Examiner. Under present practice, there are two requirements for a proper requirement for restriction:

- (1) The inventions must be independent ... or distinct as claimed...; **and**
- (2) **There must be a serious burden on the examiner** if restriction is not required...

(MPEP 803, emphasis added)..

No serious burden has been demonstrated, or indeed even alleged, in the restriction requirement. For example, it does not appear that different searches will be required, nor does it appear that there exists a serious burden for the Examiner on other grounds.

In the Restriction Requirement, the Examiner contends that inventions II and III differ, because they are used to identify different compounds. To the contrary, both claim 28 and claim 29 measure "the presence or amount of at least one target ligand in a fluid sample." *See, e.g.*, preamble to claims 28 and 29. Each claim merely uses a different labeled species as a reporter molecule. This identity of the subject matter of the claims is borne out by the fact that both claims fall within the same class and subclass. Accordingly, Applicant respectfully requests that the Examiner withdraw the restriction requirement with respect to groups II and III.

CONCLUSION

Applicant respectfully submits that the pending claims are in condition for allowance. An early notice to that effect is earnestly solicited. Should any matters remain outstanding, the Examiner is encouraged to telephone the undersigned at (619) 552-8400 so that they may be resolved without the need for additional action and response thereto.

Respectfully submitted,
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